



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

Sanatgar, Homayoun, et al.

Serial No.: 10/601,110

Filed: June 23, 2003

**For: METAL TUBE SUPPORT
BRACKET AND METHOD FOR
SUPPORTING A METAL TUBE**

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) **Group Art Unit: 3632**

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) **Examiner: King, Anita M.**

)
) **Confirmation No.: 7024**

)
) **Customer No.: 34026**

)
) **Previous Docket No. 012903**

)
) **New Docket No. 094996-155036**

)
) **Attorney Handling Renewed Petition:**

) **Paul Shanowski, Senior Attorney**

) **Office of Petitions**
)

DECLARATION OF DAVID A. RANDALL

Mail Stop Petition
Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I, David A. Randall, hereby declare and state as follows:

1. I am an attorney for Thermal Dynamics, Inc., the owner by assignment of the above patent application. I was involved in the preparation and filing of the original Petition For Revival of An Application For Patent Abandoned Unintentionally Under C.F.R. § 1.137(b), filed

CERTIFICATE OF MAILING (37 C.F.R. §1.10)

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as 'Express Mail Post Office To Addressee' in an envelope addressed to Mail Stop Petition, Commissioner for Patents, USPTO, P.O. Box 1450, Alexandria, VA 22313-1450.

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July 18, 2008
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LAI-2953876v2

Yolanda G. Ybuan
Name of Person Mailing Paper

Yolanda G. Ybuan
Signature of Person Mailing Paper

on November 21, 2007.

2. On August 10, 2007, I was contacted by Mr. Homayoun Sanatgar concerning the possible revival of U.S. Patent Application No. 10/601,110 ("the '110 Application"). Mr. Sanatgar is a named inventor and employee of Thermal Dynamics. I was previously contacted by Mr. Sanatgar on February 1, 2007 in connection with a potential infringement issue for an unrelated case, U.S. Patent Application No. 10/967,810 (also handled by Mr. Appel), and informed Mr. Sanatgar that day the case had gone abandoned.

3. Following my discussions with Mr. Sanatgar on the '110 application, I ordered the file history. By August 21, 2007, I had received the file history (other than cited references) and had preliminarily reviewed the majority of the file history, including the October 1, 2004 Office Action that was not responded to and which ultimately led to the Notice of Abandonment dated April 20, 2005.

4. As part of my review of the file history, I learned that the Examiner had cited thirteen (13) patents in the Notice of References Cited that was attached to the October 1, 2004 Office Action and actually relied on four of the patents in the Notice to make substantive rejections against the pending claims. In addition to the § 102 and § 103 rejections, the Examiner had objected to the drawings, objected to some of the claims, and rejected claims 1 and 8 for lack of definiteness. My opinion of these non-art based rejections was that they were easily overcome. However, due to the number of references cited by the Examiner, and Mr. Sanatgar's expertise in the field, I concluded it would be beneficial to have Mr. Sanatgar's input concerning the patents relied on to reject the claims in the '110 Application.

5. After reporting my preliminary findings to Mr. Sanatgar on August 21, I ordered the patents cited by the Examiner in the Notice of References Cited and then forwarded them, along with other relevant portions of the file history, including the October 1, 2004 Office Action, to Mr. Sanatgar for his review on September 10, 2007. On September 25, 2007, Mr. Sanatgar provided me with the results of his analysis of the patents the Examiner relied upon to reject the

claims in the October 1, 2004 Office Action. Due to Mr. Sanatgar's travel schedule, we were unable to discuss the results of Mr. Sanatgar's analysis and the revival of the '110 Application until the following week, on October 3, 2004.


6. Following my conversation with Mr. Sanatgar on October 3, 2007, I instructed a patent agent with which I frequently work, Shyh-Jye Wang, to prepare a draft response to the Office Action and a draft Petition to Revive the '110 Application for my review. Mr. Wang finished preparation of an initial draft of the Response to the Office Action and the initial draft of the Petition to Revive and related papers on October 23, 2007. I reviewed the initial draft of the papers on October 23, 2007 and provided Mr. Wang with my comments to the same. Mr. Wang provided me with a second draft of the papers for reviving the instant application on October 26, 2007, which I reviewed that day. Over the next week and one-half, Mr. Wang and I worked to prepare final drafts of the Response to October 1, 2004 Office Action and the Petition to Revive, and we worked with Mr. Sanatgar to prepare his declaration in support of the initial Petition to Revive.

7. On November 7, 2007, Mr. Wang forwarded the final draft of the Petition and supporting papers to Mr. Sanatgar for his review and comment. On November 20, 2007, we received Mr. Sanatgar's approval to file the Petition and supporting papers, along with a copy of his signed declaration. On November 21, 2007, I filed the Petition to Revive along with the supporting papers with the Patent and Trademark Office.

8. At no time from the time Mr. Sanatgar contacted me on August 10, 2007 concerning the '110 Application until the date the Response and Petition were filed on November 21, 2007, did I intentionally delay in filing the initial petition under 37 C.F.R. 1.137(b). To the contrary, throughout this time I attempted to work diligently with Messrs. Wang and Sanatgar toward the evaluation of the October 1, 2004 Office Action and ultimately the filing of what I believed to be a grantable Petition under 1.137(b) on November 1, 2007.

I declare under penalty of perjury that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under § 1001 of Title 18 of the United States Code, and that willful false statements may jeopardize the validity of the application or patent issuing thereon.

Executed this 17th day of July 2008, at Los Angeles,
California, U.S.A.



David A. Randall